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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/771,063	02/03/2004	Carlos M. Coro	66643.010100	2233
7590	02/28/2005		EXAMINER	
GREENERG TRAURIG, P.A. 1221 Brickell Avenue Miami, FL 33131			COE, SUSAN D	
			ART UNIT	PAPER NUMBER
			1654	

DATE MAILED: 02/28/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	10/771,063	CORO, CARLOS M.
	<b>Examiner</b>	<b>Art Unit</b>
	Susan D. Coe	1654

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on \_\_\_\_\_.
- 2a) This action is **FINAL**.                          2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-11 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-11 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All    b) Some \* c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date <u>2/3/04</u> .	4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s)/Mail Date. _____. 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) 6) <input type="checkbox"/> Other: _____.
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## **DETAILED ACTION**

1. Claims 1-11 are currently pending.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1 and 3-5 are rejected under 35 U.S.C. 102(b) as being anticipated by US Pat. No. 5,904,924.

US '924 teaches a composition that contains dandelion, parsley and ingredients that would contain chlorophyll such as algae. The composition is mixed with water. The composition comprises a large percentage of herbal ingredients that are plant foliage. Thus, the reference is considered to meet applicant's claim 4 (see column 4, lines 9, 10, 25, 26, and 53 and column 2, lines 25-30).

The reference does not specifically teach that the composition is a breath spray for use by hunters. However, the reference is considered to teach a composition that is the same as applicant's composition, dandelion, parsley and chlorophyll in a water base. Thus, since the composition is the same, the reference properly anticipates the stated claims.

3. Claims 1 and 2 are rejected under 35 U.S.C. 102(b) as being anticipated by US Pat. No. 4,769,452.

US '452 teaches a breath spray that contains glycerin and bloodroot extract (see column 3, Phase Two). Bloodroot is a perennial herb (see column 1, lines 14-17). Thus, the reference is considered to teach claims 1 and 2. The reference does not specifically teach that the spray is for use by hunters; however, since the reference composition is the same as the claimed composition, the reference properly anticipates the stated claims.

4. Claims 1-4 are rejected under 35 U.S.C. 102(b) as being anticipated by US Pat. No. 6,350,435.

US '435 teaches a composition that contains parsley and chlorophyll (see column 2, lines 37-48). The reference teaches that glycerin and water can be added to the composition (see Examples 4 and 5).

The reference does not specifically teach that the composition is a breath spray for use by hunters. However, the reference is considered to teach a composition that is the same as applicant's composition glycerin, parsley and chlorophyll that can be in a water base. Thus, since the composition is the same, the reference properly anticipates the stated claims.

#### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 1-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Pat. No. 6,350,435 in view of CN 1138467 (English abstract) and US Pat. No. 4,769,452.

As discussed above, US '435 teaches a composition comprising chlorophyll and parsley. The composition can contain water and glycerin. The reference teaches that the composition is used to treat bad breath. The reference does not specifically teach using dandelion in the composition.

CN '467 teaches that dandelion is used in breath freshening compositions. These references show that it was well known in the art at the time of the invention to use parsley, chlorophyll, and dandelion in compositions that treat bad breath. It is well known that it is *prima facie* obvious to combine two or more ingredients each of which is taught by the prior art to be useful for the same purpose in order to form a third composition which is useful for the same purpose. The idea for combining them flows logically from their having been used individually in the prior art. *In re Pinten*, 459 F.2d 1053, 173 USPQ 801 (CCPA 1972); *In re Susi*, 58 CCPA 1074, 1079-80; 440 F.2d 442, 445; 169 USPQ 423, 426 (1971); *In re Crockett*, 47 CCPA 1018, 1020-21; 279 F.2d 274, 276-277; 126 USPQ 186, 188 (1960).

Based on the disclosure by these references that these substances are used in compositions to treat bad breath, an artisan of ordinary skill would have a reasonable expectation that a combination of the substances would also be useful in creating compositions to treat bowel disorders. Therefore, the artisan would have been motivated to combine the claimed ingredients into a single composition. No patentable invention resides in combining old ingredients of known properties where the results obtained thereby are no more than the additive effect of the ingredients. See *In re Sussman*, 1943 C.D. 518; *In re Huellmantel* 139 USPQ 496; *In re Crockett* 126 USPQ 186.

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US '435 teaches making mouthwashes. US '452 teaches that mouthwash compositions can contain glycerin to modify the viscosity to form breath sprays (see column 3, Phase Two). Thus, a person of ordinary skill in the art would have a reasonable motivation to modify the mouthwash of US '435 to have a viscosity suitable for a breath spray.

The references also do not specifically teach adding the ingredients in the amounts claimed by applicant. The amount of a specific ingredient in a composition is clearly a result effective parameter that a person of ordinary skill in the art would routinely optimize. Optimization of parameters is a routine practice that would be obvious for a person of ordinary skill in the art to employ. It would have been customary for an artisan of ordinary skill to determine the optimal amount of each ingredient to add in order to best achieve the desired results. Thus, absent some demonstration of unexpected results from the claimed parameters, this optimization of ingredient amount would have been obvious at the time of applicant's invention.

6. No claims are allowed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Susan Coe whose telephone number is (571) 272-0963. The examiner can normally be reached on Monday to Thursday from 8:00 to 5:30 and on alternating Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Bruce Campell, can be reached on (571) 272-0974. The official fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information

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for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Any inquiry of a general nature or relating to the status of this application or proceeding can be directed to the receptionist whose telephone number is (571) 272-1600.

*Susan D. Coe*  
2-23-05

Susan D. Coe  
Primary Examiner  
Art Unit 1654